



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2012-12

Legistar #: 20120142

City Council Hearing: Wednesday, September 12, 2012; Council Chambers - 7:00 p.m.

Applicant: Michael McDonald
Pavilion Development
5605 Carnegie Boulevard
Suite 110
Charlotte, N. C. 28209

Property Owner: FC Enterprises, Inc.
Attn: Shelina Virani, President
2199 Glenmore Lane
Snellville, GA 30078

***Counsel:** Paul S. Suda, Esq.
Attorney at Law
1362 Salem Drive
Alpharetta, GA 30009

***Counsel for Property Owner, FC Enterprises, Inc. with the permission and consent of the Applicant, Pavilion Development**

Address: 2195 Cobb Parkway, South

Land Lot: 08050; District: 17; Parcel: 0160; Council Ward: 1; Existing Zoning: CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to allow a general advertising sign outside of the area within 100 feet of the right of way of Interstate 75. *[Section 714.04 (F)]*
2. Variance to waive the requirement that a general advertising sign be regulated as a principal use. *[Section 714.04 (F)(1)]*
3. Variance to allow a general advertising sign to be located within 1,000 foot radius of another general advertising sign. *[Section 714.04 (F)(5)]*
4. Variance to reduce the side setback for a general advertising sign support structure from 15' to 11'. *[Section 714.04 (F)(8)]*
5. Variance to reduce the side setback for a general advertising sign face from 11.25' to 7'. *[Section 714.04 (F)(8)]*
6. Variance to reduce the front setback for a general advertising sign face from 30' to 17'. *[Section 714.04 (F)(8)]*
7. Variance to allow a general advertising sign be located on a lot upon which a building and signage is located. *[Section 714.04 (F)(9)]*
8. Variance to allow a general advertising sign be located closer to a permanent structure than the distance that is equal to the height of the sign. *[Section 714.04 (F)(10)]*

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



2195 Cobb Parkway South



2195 Cobb Parkway South – Looking North

Staff Analysis:

Michael McDonald, petitioner for the owner, is requesting multiple variances in order to keep the existing billboard at 2195 Cobb Parkway South while the property is redeveloped into a National Tire & Battery. The subject property is zoned CRC (Community Retail Commercial). The property to the south is also zoned CRC and contains a Target and DeKalb Tire (to be demolished). An access drive leading to Wellstar Windy Hill and zoned OI (Office Institutional) is located immediately to the north of the subject property. A wooded area belonging to the hospital and also zoned OI is located to the east. Across Cobb Parkway South to the west are properties located within Cobb County. The subject property currently contains a Checkers fast food restaurant.

The applicant is proposing to redevelop the entire site and replace the existing Checkers restaurant with a new National Tire & Battery (NTB) store, but wishes to retain the existing general advertising sign (billboard). Although the existing billboard structure currently shares the property with Checkers, Section 714.06 (C)(5) states “*where there are existing nonconforming signs on a parcel in which there will be a renovation of the primary structure exceeding 50% of its replacement cost or there is redevelopment of a vacant lot, the entire sign (in each case) shall be required to come into compliance with the City of Marietta Sign Ordinance.*” (In addition, should the current building be completely removed, Section 718.03 includes the statement that “*a review shall be required for any proposed use of land before any building permit is issued or any improvement, grading or alteration of land or building commences to determine compliance with all provisions of the zoning ordinance.*”.)

Some regulations for general advertising signs (billboards) include the prohibition of new billboard structures:

- Along Cobb Parkway (or anywhere other than along I-75)
- On the same parcel as another use
- On a substandard lot (each parcel is required a minimum lot size of 20,000 sq.ft.)
- Within the building setbacks, although certain provisions are made for the panel's projection into the setbacks.

Billboards are also required to be located a distance equal to the height of the billboard from another structure, also known as the "fall zone." The existing Checker's building is located partially underneath the billboard panels. And while the NTB building is shown to be approximately 6' away from the billboard, it will still be within the "fall zone". As a result, the existing billboard would have to be removed from the property or these variances would have to be granted in order for the project to proceed.

The following are similar cases that have been heard by City Council in the past:

- V2006-03 – 155 Cobb Parkway South: This variance request would have allowed a billboard structure remain on the parcel after the site was redeveloped into the current Arby's and Popeye's restaurants and allow the Arby's building be constructed within 15' of the billboard. This variance was denied and the billboard was demolished.
- V2010-08 – 1440 Field Park Circle: This variance request involved allowing an existing billboard structure to remain on a parcel with a new classroom facility used by the Atlanta Adventist Academy's Marietta campus. The billboard structure was initially indicated as "to be removed" on the site plans for the parking lot and, on the site plans for the construction of the facility, the billboard was not shown. As a result, variances were applied for to allow both the billboard and the school building remain. The request was denied.

The applicant has preliminarily agreed that the permit for the general advertising sign currently existing on the property "shall expire, become void and be revoked on and after January 1, 2019".

*****This item was tabled at the March 7, 2012 City Council meeting.*****

*****This item was tabled at the April 11, 2012 City Council meeting.*****

*****This item was tabled at the May 9, 2012 City Council meeting.*****

***** This item was tabled at the June 13, 2012 City Council meeting to January 9, 2013.*****

*****This item was requested to be placed on the September 12, 2012 City Council meeting via email from Doug Haynie.*****